NICHOLAS ARTHUR NOCK v. MOHAMED ALI BIN SULEIMAN & ANOR.

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) April 8, 1976]

[Singapore — Civil Appeal No. 46 of 1975]

Tort — Negligence — Damages — Loss of future earnings — Assessment of.

This was an appeal from the judgment of Winslow J. (*ante*, p. 100). The learned judge had found that the first respondent the driver of the second respondent's lorry was wholly to blame for the appellant's injuries. The parties had agreed general damages for pain, suffering and loss of amenities at $20,000 and $19,842.35 special damages in respect of loss of earnings etc. The learned judge also assessed loss of future earnings at $31,084.80. The appellant appealed against this award in respect of loss of future earnings.

Held, dismissing the appeal: the evidence justified the findings of and the various contingencies which the learned trial judge took into consideration and in the circumstances of this case, the award for loss of future earnings was adequate and not a wholly erroneous estimate.

COURT OF APPEAL.

K. E. Hilborne for the appellant.

H. E. Cashin for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): On March 11, 1970 the appellant, Nicholas Arthur Nock, riding a motor cycle was involved in a collision with a motor lorry belonging to the second respondents. He sustained severe injuries. At the time of the accident he was in the R.A.F. and stationed in Singapore. He was born in February 1949, had joined the R.A.F. as an apprentice in August 1966 and had signed on for a term of 9 years in February 1967. At the date of the accident he had the rank of Senior Aircraftsman holding a technical qualification or trade classification of Aircraft Mechanic (Propulsion).

He sued the respondents for damages and the High Court gave judgment in his favour. Winslow J., found that the first respondent, the driver of the second respondents' lorry was wholly to blame for the appellant's injuries. The parties had agreed general damages for pain, suffering and loss of amenities at $20,000 and $19,842.35 special damages in respect of loss of earnings etc. Winslow J., assessed loss of future earnings at $31,084.80 and accordingly gave judgment for the appellant in the sum of $70,923.15 and costs. The appellant now appeals against the award of $31,084.80 in respect of loss of future earnings.

As a result of the injuries the appellant sustained he was discharged from the R.A.F. on December 17, 1970 as being "below current air force medical standards." He had a permanent injury to his right eye and it is convenient to set out the three specialist reports, one in March 1972, another in March 1973 and the last in October 1974. They read as follows: —

"March 1, 1972

RE: H4285459 EX SENIOR AIRCRAFTSMAN NOCK N A

1. This airman had a motor accident in Singapore on March 11, 1970.

2. So far as his eyes are concerned, when we first saw him he had a right lateral rectus palsy which was giving him a right convergent squint and a breakdown of his binocular vision. He also had a visual field defect, is a bitemporal hemianopia. Visual acuity in the right eye had gone down to 6/18 due to amblyopia.

3. So far as treatment is concerned, I have already done one operation on him, a right medical rectus recession on November 9, 1971, which reduced his squint considerably. When I saw him on February 7, 1972 his right convergent squint was at the angle of +14 degrees. He had some fusion, that is some sign of binocular function at this angle of 14 degrees with a very small range. His right vision 6/18, left vision 6/5.

4. His name has been put back onto the waiting list when I will do surgery directly to the paralysed muscle and I hope to improve his condition further by doing this.

5. I will not be able to give a final assessment for some little time.

G.W.T. Smith
Wing Commander
Consultant Ophthalmic Surgeon."

"March 20, 1973

RE: H4285459 EX SENIOR AIRCRAFTSMAN NOCK N A

1. Further to my report dated March 1, 1972, Nock was reviewed here on February 14, 1973 and his condition now is as follows.

2. Following further surgery on October 3, 1972 —

Right Vision 6/24

Left Vision 6/6

He has a convergent squint of +4° L/R 7 which is cosmetically satisfactory. There is gross limitation of abduction of the Right eye. He suppresses his Right vision and has no binocular function. He has some bitemporal hemianopia.

3. No further surgery is contemplated, and I consider his condition is now probably stationary and permanent.

G.W.T. Smith
Wing Commander
Consultant Ophthalmic Surgeon."

"*October 4, 1974*

Re: Mr. N.A. Nock, Ella House, North Acre,
Caston, Attleborough, Norfolk, England.

I have examined this patient today and my findings are as follows,

R.6/60 Minus.0.75/Minus.1.50.Axis.180. 6/12

L.6/12 Minus.0.25/Minus.1.00.Axis. 75. 6/6

There is a complete loss of the temporal field in his right eye (R. HEMIANOPIA).

Similarly, there is complete loss of temporal movement of his right eye (ABDUCTION).

Damage to the right eye lid has caused a marked drooping (PTOSIS) of this lid.

D.G.J. Lord, F.S.M.C. F.B.O.A."

The undisputed evidence is that a year after the accident and 3½ months after his discharge from the R.A.F. the appellant found employment as a trainee aircraft engineer with the Norfolk and Norwich Aero Club on April 1, 1971 at the commencing salary of £17.50 per week. On June 1, 1972 his salary was increased to £20 per week. On December 21, 1973 he left the Norfolk and Norwich Aero Club.

About two weeks later, on January 1, 1974 he found employment with Air Anglia at a weekly salary of £27.50. Three months later he left Air Anglia and rejoined Norfolk and Norwich Aero Club at a weekly salary of £27. Four months later, on July 1, 1974 he again left Norfolk and Norwich Aero Club to take immediate employment with Arrow Air Services at a weekly salary of £35. He remained with Arrow Air Services until July 11, 1975 and during his one year period there his weekly salary remained at £35. The trial before Winslow J., commenced on August 5, 1975. He did not appear to give evidence before Winslow J.,

his evidence having been taken in England before a Special Examiner on July 3, 1973. The fact that he was employed by Arrow Air Services from July 1, 1974 to July 11, 1975 at a weekly salary of £35 appears to have been supplied to the High Court by his Counsel. It seems to us fair to draw the inference from the £35 weekly salary he obtained from Arrow Air Services that up to the date of the trial he had obtained no qualification beyond that of a trainee aircraft engineer. The significance of this inference will appear later. On all the facts we have just outlined he was clearly fully employable as found by Winslow J.

As we have said, he appeared before a Special Examiner in England on July 3, 1973 when he was a trainee aircraft engineer with Norfolk and Norwich Aero Club. Before the Special Examiner, the appellant said he took the job of trainee aircraft engineer in order to qualify for a licence to maintain light aircraft and that it would take six months to qualify for one type of light aircraft "if he got down to it." He admitted he had to pass an examination to qualify for a licence and he admitted that even up to July 1973 he had not made any arrangements to take his first examination. When pressed he said he would take six months at the very latest to take his first examination in approximately January 1974. There is no evidence at the trial in August 1975 that the appellant had as yet taken his first examination for a licence to maintain light aircraft. In our opinion, this fact is significant because in his evidence before the Special Examiner appears this passage: —

"*Q.* Would you agree with us that the likelihood of your advancing to Junior Technician or to Corporal or further would depend on your willingness to enter upon study and hard work.

A. Yes."

In the R.A.F. the evidence is that before a Senior Aircraftsman could become a Junior Technician he would have to take what is called "the fitter's course" and to pass an examination at the end of that course. The evidence also is that to be accepted for the fitter's course, he had to get on to what is called "The Science B course" which was a programme course consisting of working through 22 'booklets." The appellant described this Science B course as follows: —

"It was a programme course, it was so many books, I think it was 22, and if you wanted you could, rather than work in the classroom, take them away and work on them whenever you wanted and bring them back and they are marked and you get a mark on that, one programme, whichever programme it was, and at the end of that course you then qualified, if you have got time as an S.A.C., to go on a fitter's course when there is a vacancy."

The appellant also said there were some failures among those who took the Science B course and admitted that the fitter's course was more difficult than the Science B course.

In the Agreed Bundle of Documents is a letter (AB8) dated November 3, 1970 from the R.A.F. Record and Pay Office, paragraph 3 of which reads as follows: —

"3. Assuming that the airman had continued in the Service until the expiration of his current 9 year engagement, expiring on February 13, 1976, the following forecasted career pattern is visualised:

a.	December 70 or later	— Educationally qualified further training
b.	March 1973 (earliest)	— Phased into fitter training
c.	March 1974	— Completion of fitter training. Transfer to Aircraft Fitter (P). Promotion to rank of Junior Technician.
d.	February 1976	— Engagement expires."

In that letter it is also said he would be receiving on December 17, 1970 (the date of his discharge) a gross weekly salary of £20-13-Od. According to paragraph 4 of the letter, on the assumption that he was still in the R.A.F., he would continue to receive this weekly salary for the period December 17, 1970 to March 31, 1971, he would received a gross weekly salary of £24-17-Od for the period April 1, 1971 to March 1974 and a gross weekly salary of £32-4-Od for the period March 1974 to February 1976.

When the trial commenced in August 1975 the salary rates for Senior Aircraftsman and above had increased though it is difficult to ascertain from the Record of Appeal what the exact rates then were. Furthermore, there appears to be no direct evidence as to whether or not a person employed in the private sector of the aircraft industry in England would be equally, better or less well paid than a person with similar qualifications or skills who is in a corresponding ground trade in the R.A.F. However the indirect evidence based on the appellant's actual salary in the private sector indicates that there is no real difference and this seems to us to be in accord with the view generally held. Winslow J., approached this question, stated his conclusion and made his award as follows: —

"I do not know why he left Arrow Air Services just before the trial. Presumably he is employable at similar rates to those received then with prospects of corresponding rises in pay subsequently such as he would have received in the Air Force with prospects of pension if he makes up his mind to join a firm having a graduated pension scheme.

In my view, this approach to his loss of future earnings having regard to the various contingencies including those relating to his future career with the Air Force which have to be considered in view of his comparatively short service with the Air Force before the accident, would not do him an injustice. He may never have remained in the Air Force; he may have failed to pass his examination or he may not have been re-engaged for a 22-year period in which case he would have had to enter the private sector with *no consequent loss of earnings* at all to speak of.

To summarise, in assessing his future earnings, I have borne in mind three crucial matters which must necessarily affect any computation thereof —

1. the fact that one cannot assume that he would succeed in remaining in the Air Force or would necessarily want to so remain;

2. the fact that comparison between the Air Force rates of pay and rates of pay in the private sector must necessarily be highly speculative if not odious and that the only yardstick I have at the moment which I can apply as to the future is in respect of the rates of pay prevailing around the time the plaintiff left Arrow Air Services at £35 per week in July 1975 when had he remained in the R.A.F. he might not have qualified yet to be a Junior Technician, if he did remain in the R.A.F. and he might have earned no more than he did with Arrow Air Services;

3. the fact that between 1971 and 1974 he seems to have got off after a slow start in the private sector, which is understandable, to a rapid increase in pay from £27 per week to £35 per week within 4 months by July 1974. He was moving from one firm to another. He was however always in employment and was no doubt trying to improve his

earnings notwithstanding his handicapped appearance which he did succeed in doing until he felt before the trial for reasons unknown. He does not seem to have done too badly in all the circumstances and his prospects of doing better are always there and, so far as I can see, he can work beyond the age of 40 years if he does not obtain pensionable employment with one employer. If by temperament he is a rolling stone he may not have lasted very long with the R.A.F. and he must, if that is so, consider himself a fortunate young man.

In all the circumstances, an award of about £7 per week until he reached the age of 60 years would, in my judgment, be far from unfair. This would give him 34 years' purchase at approximately $160 per month which will, because he will receive the full amount now, necessarily be less (according to the Murphy tables which the Courts have been using for a very long time) than the sum reached by multiplying the average monthly loss by the total number of months in 34 years. I would accordingly award him $31,084.80 for future loss of earnings.

I might add that, although Special Damages in respect of past loss of earnings have been agreed at $19,842.35, this figure, in my opinion, is on the generous side."

The appellant contends that the award of $31,084.80 for loss of future earnings is totally erroneous and far too low. The only argument advanced before us which we consider may have some substance is the argument that Winslow J., failed to give sufficient consideration to and make due allowance for the pension which the appellant would have received at the age of 40 (after 22 years service) had he remained in the R.A.F. and failed to give any consideration to the gratuity which the appellant would have received upon leaving the R.A.F. The evidence of Miss Anderson from the R.A.F. Support Unit assumed that the appellant would serve for 22 years until 1989 and at the end of such service receive a pension for life of £1,286 *i.e.* £7,935 per annum on the further assumption that he would be then holding the rank of Chief Technician (Exhibit P3) and would also be entitled to a gratuity of £3,858 or $23,803.86.

In our opinion, the evidence justifies the findings of and the various contingencies which Winslow J., took into consideration in determining that "an award of about £7 per week until he reaches the age of 60 years would be ... far from unfair." It follows, in our judgment that the possibility of the appellant remaining in the R.A.F. for 22 years when he would then be 40 years of age and holding the rank of Chief Technician on retirement with pension was clearly taken into consideration by Winslow J., in arriving at the figure of £7 per week until the age of 60. For the same reason we are of the opinion that Winslow J., took into consideration the gratuity that the appellant would have received had he continued to serve for 22 years in the R.A.F.

It must be remembered that it was for the appellant to prove his loss of future earnings. On the evidence from March 1, 1971, almost one year after the accident, he was fully employable in similar work and at the date of the trial of the action was employable at similar rates with comparable qualifications. He had, as special damages, been fully compensated for his loss of earnings up to the date of the trial. He was as Winslow J., put it "a rolling stone" shifting from one job to another. From March 1971 to August 1975 he had not taken a single examination to obtain a better technical qualification. Taking all these matters into consideration we are quite satisfied that the award by Winslow J., of $31,084.80 for loss of future earnings is adequate and not a wholly erroneous estimate. For all these reasons, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

LIM TOW PENG & ANOR. v. SINGAPORE BUS SERVICES LTD.

[C.A. (Wee Chong Jin C.J., Choor Singh and Kulasekaram JJ.) April 20, 1976]
[Singapore — Civil Appeal No. 54 of 1975]

Industrial Law — Employer and employee — Termination of services for misconduct — No hearing given — Application for declaration — Employment Act (Cap. 122), s. 14.

The appellants were informed that their services had been terminated "after due investigation into their misconduct". In fact no enquiry was made on the appellants of any alleged misconduct on their part nor were they told of the nature of any alleged misconduct on their parts. They were not given any opportunity to be heard concerning any alleged misconduct on their part. The appellants claimed a declaration that their purported dismissal by the respondents was inoperative, null and void and alternatively for damages. At the trial it was conceded that the dismissal of the appellants was wrongful and that the respondents were liable to pay such damages as the court may assess. The learned trial judge held that the appellants were entitled to damages but he refused to make the declaratory order sought by the appellants. The appellants appealed.

Held, dismissing the appeal: (1) the provisions of section 14 of the Employment Act are not mandatory. An employer is not obliged to comply with section 14 but if he disregards section 14 and dismisses an employee without an enquiry, as in this case, the dismissal can be enquired into and reinstatement with full pay ordered by the Minister. But no other right is given by section 14. The effect of the section is that a dismissal without notice before due enquiry is wrongful and not that it is ineffective or null and void;

(2) in this case the trial judge came to a right decision in rejecting the appellant's claim for a declaratory order.

Cases referred to:-

(1) *Vine* v. *National Labour Board* [1957] A.C. 488.

(2) *Ridge* v. *Baldwin* [1964] A.C. 40, 65.

(3) *Vine* v. *National Labour Board* [1956] 1 All E.R. 1 at p. 9-10.

(4) *Vine* v. *National Labour Board* [1956] 3 All E.R. 939, 946.

(5) *Francis* v. *Municipal Councillors of Kuala Lumpur* [1962] M.L.J. 407, 410.

(6) *University Council of Vidyodaya University of Ceylon* v. *Silva* [1965] 1 W.L.R. 77, 79.

(7) *Vasudevan Pillai & Anor.* v. *The City Council of Singapore* [1968] 2 M.L.J. 16, 20.

COURT OF APPEAL.

J.B. Jeyaretnam for the appellants.

Tan Kok Quan for the respondents.

Choor Singh J. (delivering the judgment of the Court): The point of law determinative of this appeal from a judgment of the High Court is a short one, namely, what is the effect of section 14 of the Employment Act on a contract of service?